

Decision 01-05-001 May 3, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of M & A INTERNATIONAL GROUP, LLC, for authority under § 1032, et. seq., of the California Public Utilities Code (PU Code) to operate on-call, door-to-door Passenger Stage between Los Angeles International (LAX), et al, Airports, Amtrak Stations, Los Angeles/Long Beach Harbors and other places of interest, described in the body of the application, on the one hand, and points in Los Angeles, Orange, Ventura, San Bernardino, Riverside and San Diego counties, on the other hand; applicant also seeks under § 1031 to operate an on-call, inter-city, passenger stage service between the cities of San Luis Obispo, Los Angeles, San Diego and intermediate points, described infra; and to establish a Zone of Rate Freedom (ZORF) under Section 454.2, et. seq., of the PU Code.

Application 99-12-007
(Filed December 3, 1999)

O P I N I O N

John E. De Brauwere, Attorney at Law, for M & A
International Group, LLC, applicant.
Oscar C. Gonzalez, Attorney at Law, protestant.

A. Summary

M & A International Group, LLC (Applicant) is granted a certificate of public convenience and necessity to operate an airport shuttle service in Southern California and authority to establish a Zone of Rate Freedom (ZORF).

B. Background

Applicant seeks a passenger stage certificate to provide on-call door-to-door service in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, on the one hand, and Los Angeles International Airport (LAX), Burbank Airport (BUR), Ontario International Airport (ONT), John Wayne Airport (SNA), Los Angeles/Long Beach Harbors (LA-HBR), Downtown Los Angeles (LA-DTN), and Westchester (LA-WST), on the other hand; between all points in Los Angeles County, on the one hand, and Los Angeles Amtrak (LA AMT), on the other hand; between points in Ventura County, on the one hand, and Oxnard Amtrak (OXR AMT) and the President Reagan Library (RR LIB), on the other hand; and between San Diego County, on the one hand, and LAX, SNA, LA-HBR, and LA WST, on the other hand. M & A also seeks authority to provide on-call intercity service between San Luis Obispo and San Diego, and intermediate points. In addition Applicant asked for a ZORF of plus or minus \$12 over and under the proposed charge filed with the application.

Airport Connection, Inc, doing business as Roadrunner (Protestant), filed a timely protest to the proposed service insofar as it sought authority in Ventura County and the cities of Agoura Hills and Calabasas in Los Angeles County. Protestant did not object to the remainder of the application. In the Scoping Memo of Assigned Commissioner Neeper, the primary issues were identified as the need for the proposed service and Applicant's financial

capability. Other matters were raised at the evidentiary hearing held in Santa Barbara on July 26, 2000 before Administrative Law Judge (ALJ) Sheldon Rosenthal and will be discussed in this opinion. The parties agreed to file concurrent briefs on October 2, 2000. The matter now stands ready for decision.

C. The Hearing

Applicant's operating manager, Abulghasem Ahmadpour, has been in the transportation business for over 28 years (Tr. 20) and currently holds charter-party passenger permit TCP-12938 (Tr. 23). Applicant contemplates service by 30 vans, though it will initially operate only four (Tr. 147). Drivers will be owner-operators (Tr. 189). The financial information filed pursuant to the Commission's Rules of Practice and Procedure (Rules) 17(h) and 21(i) was challenged by Protestant during cross-examination. Without detailing the multiple problems that were uncovered, it is sufficient to indicate that Ahmadpour agreed that the balance sheet was not reliable (Tr. 138). During a recess, Applicant submitted a new balance sheet and income statement (Tr. 186), which became Exhibit (Exh.) 14. This proved to be an unaudited document (Tr. 233) containing whatever numbers were given to its creator by Ahmadpour (Tr. 234.). Ahmadpour acknowledged that there were a lot of things wrong with Exh. 14 (Tr. 242), perhaps up to 20-30% (Tr. 238).

Ebi Esuli sponsored the pro forma income and expense statement attached to the application. Cross-examination showed that the expenses estimated in this document were considerably understated.

During cross-examination it was also developed that Applicant had purchased advertisements in various telephone books seeking passengers for its shuttle service although it has not yet obtained authority to perform such

service (Exh. 13). These advertisements offered the public the use of a towncar and a large bus (Tr. 152-153). Ahmadpour admitted that he has no such vehicles, but intends to put them in service (Tr. 152-153). As to the telephone advertisements, he explained that he needed to put the items in the phone books or miss a yearly cycle. Thus, he anticipated the granting of his certificate (Tr. 153, 246). When he receives a customer's inquiry regarding shuttle service he tells the customer that he is "booked up" and refers them to another carrier (Tr. 249-250).

Protestant presented Desmond Sandlin, owner of Protestant. He described the history of his company and the efforts and cost incurred in reaching its present successful condition. He also compared Protestant's fares with those proposed by Applicant to show that Protestant offers cheaper fares than will Applicant (Tr. 269-270).

Protestant sponsored Judy Christian, Ground Transportation Manager at LAX. Christian described the system employed at LAX for admitting airport shuttles to the various terminals. Only concession carriers, such as Protestant (Exh. 5), are permitted to all eight terminals. They pay a circuit fee of \$5 for each circuit of the terminal area (Tr. 31). The remainder may only pick up passengers at Terminal 2, and pay a circuit fee of \$1.50 (Tr. 47). Passengers deplaning at other than Terminal 2 who do not wish to employ a concession carrier must use an LAX courtesy shuttle to Terminal 2 (Tr. 49). Sandlin testified that the inconvenience to the public in waiting for the courtesy shuttle could last 30 minutes or more (Tr. 284), plus the problem of loading and unloading luggage into the courtesy vehicle.

Finally, in response to the ALJ, Sandlin stated that if anyone were to go through the difficulty of obtaining a concession from LAX and pay the \$5 loop fee he would welcome the competition (Tr. 294).

D. Discussion

We must first address Applicant's qualification. The financial showing of Applicant was less than admirable. During the prehearing conference of March 22, 2000 the ALJ specifically called counsels' attention to American Express Shuttle, Decision (D.) 99-10-068, October 21, 1999, in which the Commission considered a similar situation. We now quote extensively from that decision.

"For many years the Commission has pursued a policy of promoting competition in passenger stage carrier markets. In furtherance of this policy, the Commission has liberally construed statutory and regulatory requirements in reviewing applications for new and expanded services. It has nevertheless required that carriers demonstrate the financial capability to support proposed ventures.

"In this case, Applicant presented a weak showing of financial fitness and customer demand for expanded service. The implication of Applicant's circumstances is that his business may fail. Notwithstanding the views of Applicant's competitors, we believe Applicant has ample incentive to make business decisions in his own best interest, and is in a better position than his competitors or this Commission to assess his risk of financial loss and his tolerance for it.

"The more important question for the Commission is whether the public interest would be compromised if Applicant's business failed, a matter no party addressed. If Applicant's business fails, we confidently assume by the record in this proceeding and by observing the circumstances at subject airports, that other carriers and transportation options would

remain available for service between Bay Area airports and the counties Applicant proposes to serve. Notwithstanding competitors' self-interested claims that Applicant offered service outside his existing PUC authority, Applicant appears to be operating safely and providing a service that, to our knowledge, is satisfactory to his riders.

"We herein state our intent to pursue policy and, if necessary, legislation that would free passenger stage carriers from costly economic regulation that, in a competitive market, serves no public purpose. In this case, Applicant has been subjected to litigation initiated by competitors who presented little evidence to suggest Applicant's proposal for existing operations would in any way disadvantage the public. Although we intend to continue to oversee carrier safety, we do not intend to use the resources of the state and legitimate businesses to provide a forum for protests that offer little or no prospect of addressing the broader public interest.

"For these reasons, we grant Applicant's request for authority to expand his services."

Given the policy announced in American Express Shuttle, supra, we find it unnecessary to further discuss the financial evidence offered by Applicant.

Protestant argues that the facts of record show that the public would be disadvantaged by granting a certificate that includes Ventura County. It points out that Protestant's fares are lower than those proposed by Applicant and that Protestant can pick up passengers at all terminals of LAX, while Applicant would be restricted to Terminal 2. These certainly are reasons for a passenger to select the service of Protestant, rather than Applicant. However, the public cannot be considered to be at a disadvantage. It still has a choice, and the public interest would not be compromised if Applicant's business were to fail.

Protestant argues that the advertisements by Applicant before it had obtained authority to conduct transportation shows that it is not fit to engage in

the activity requested. Protestant also calls attention to what it calls Applicant's misleading practice of telling customers that the towncars are booked up, rather than non-existent. While we do not condone these actions, we shall not deny him the requested certificate. We shall put him on notice that we expect him to comply with the rules and regulations of the Commission, as we require of all other carriers. We further expect strict compliance with accounting standards in all financial information submitted to us. Advertising must be truthful.

Applicant also requests authority to establish a ZORF of \$12 above and below any of the proposed fares, shown in Exhibit B, attached to the application. The minimum one-way adult fare is \$5. Applicant will compete with other PSCs, taxicabs, limousines, buses, and automobiles in its service area. The establishment of the ZORF is fair and reasonable.

This matter was initially designated as a ratesetting proceeding and preliminarily determined that a hearing was not necessary. (Resolution ALJ 3029) dated December 16, 1999. It was published in the Commission's Calendar on December 21, 1999. Following receipt of the protest and two telephonic prehearing conferences a Scoping Memo dated June 20, 2000 was issued by Assigned Commissioner Neeper. This outlined the issues to be resolved and appointed the ALJ as the principal hearing officer.

E. Comments on the Proposed Decision

The proposed decision of ALJ Sheldon Rosenthal in this matter was mailed to the parties in accordance with Pub. Util. Code § (311(d) and Rule 77.1 of the Rules and Practice and Procedure. No comments were received.

Findings of Fact

1. Applicant proposes to offer shuttle service throughout much of Southern California to various airports, train stations, harbors, and other specific points, and to offer on-call service between the cities of San Luis Obispo, Los Angeles, and San Diego and intermediary points.

2. Applicant proposes to start service with four vans operated by owner-operators.

3. Applicant's general manager has charter-party carrier authority from this Commission and over twenty years experience in transportation.

4. Applicant's financial showing, in conformance with our Rules of Practice and Procedure was not encouraging to sustained operations.

5. Applicant engaged in advertising his services in local telephone directories before having obtained a certificate from this Commission. There was no evidence of service having been provided in response to these advertisements.

6. Protestant offers better service to Ventura County from LAX at cheaper rates.

7. Protestant offered to withdraw its protest if Applicant eliminated Ventura County from its requested certificate area.

8. Applicant requests authority to establish a ZORF of \$12 above and below any of the proposed fares, shown in Exhibit B, attached to the application. The minimum one-way adult fare is \$5.

9. Applicant will compete with PSCs, taxicabs, limousines, buses, and automobiles in its operations. The ZORF is fair and reasonable.

Conclusions of Law

1. Under the policy of American Express Shuttle, D.99-10-068 we no longer scrutinize the financial information presented in an application for a passenger stage certificate.

2. Applicant should be cautioned that all financial information submitted to this Commission must conform to proper accounting standards.

3. Applicant should be cautioned that advertising must be consistent with the services offered by Applicant. With this warning, Applicant is cautioned that if such conduct is repeated, it will constitute grounds for revocation and reference to the local district attorney.

4. Applicant has demonstrated knowledge of the transportation industry sufficient to conduct the service requested.

5. Applicant should be granted a certificate of public convenience as requested.

6. There was no protest to Applicant's request for inter-city service between San Luis Obispo, Los Angeles, and San Diego, and intermediate points.

7. The request for a ZORF should be granted.

8. Before Applicant changes any fares under the ZORF authorized below, Applicant shall give this Commission at least 10 days' notice. The filing of ZORF fares should be shown in the tariff showing between each pair of service points the high and low ends of the ZORF and the then currently effective fare.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to M & A International Group, LLC (Applicant), a limited liability company,

authorizing it to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport persons and their baggage, between the points and over the routes set forth in Appendix PSC-12938, subject to the conditions contained in the following paragraphs.

2. Applicant is cautioned that proper accounting standards must be followed in all financial submissions to this Commission.
3. Applicant is cautioned that it must not advertise service or conveniences that it is not offering or not authorized to perform.
4. Applicant shall:
 - a. File a written acceptance of this certificate within 30 days after this order is effective.
 - b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
 - c. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.
 - d. Comply with General Orders Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.
 - e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
 - f. Maintain accounting records in conformity with the Uniform System of Accounts.
 - g. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
 - h. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
 - i. Enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code

5. Applicant is authorized under Pub. Util. Code § 454.2 to establish a ZORF of \$8 above and below any of the proposed fares of \$20 and under, and \$15 above and below the proposed fares above \$20, shown in Exhibit C, attached to the application. The minimum one-way adult fare is \$5.

6. Applicant shall file a ZORF tariff in accordance with the application on not less than 10 days' notice to the Commission and to the public. The ZORF shall expire unless exercised within 120 days after the effective date of this order.

7. Applicant may make changes within the ZORF by filing amended tariffs on not less than 10 days' notice to the Commission and to the public. The tariff shall include between each pair of service points the authorized maximum and minimum fares and the fare to be charged.

8. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.

9. In addition to posting and filing tariffs, Applicant shall post notices explaining fare changes in its terminals and passenger-carrying vehicles. Such notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least thirty days.

10. Applicant is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph 4 have been filed with the Commission and that the CHP has approved the use of Applicant's vehicle for service.

11. Before beginning service to any airport, Applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are authorized by the airport's governing body.

12. The CPCN to operate as PSC-12938, granted herein, expires, unless exercised within 120 days after the effective date of this order.

13. The Application is granted as set forth above.

14. This proceeding is closed.

This order is effective today.

Dated May 3, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-12938

Showing passenger stage operative rights, restrictions,
limitations, exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

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SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS.

M & A International Group, LLC, a limited liability company, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between points and places as described in Section III, and over and along the routes described in Section III, subject however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.
- b. The term "on-call", as used, refers to service that is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- c. No passengers shall be transported except those having a point of origin or destination as described in Section IIB, IIC, or IID.
- d. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

SECTION II. SERVICE AREA.

A. Points and places in the counties of:

1. Los Angeles.
2. Orange.
3. Ventura.
4. Riverside.
5. San Bernardino.
6. San Diego.

B. Airports of:

1. Los Angeles International Airport (LAX).
2. Burbank Airport (BUR).
3. Ontario International Airport (ONT).
4. John Wayne Airport (SNA).
5. All points within the geographical limits of U.S. Postal Zip Code 90045 (LA-WST).

C. Train Stations, Harbors, Library:

1. Los Angeles AMTRAK (LA AMT).
2. Oxnard AMTRAK (OXR AMT).
3. Los Angeles/Long Beach Harbors (HBR).
4. Ronald Reagan Library (RR LIB).

D. Downtown Los Angeles is described as the points and places within the geographical limits of the following U.S. Postal Zip Codes: 90007, 90012, 90013, 90014, 90015, 90071, and 90089

SECTION III. ROUTE DESCRIPTION.

Route 1 – LA Basin -Airports/Harbors/Cities

Commencing from any point as described in Section IIA, except San Diego County, then over the most convenient streets, expressways, and highways to any point or place described in Sections IIB, and IID, and HBR.

SECTION III. ROUTE DESCRIPTION (concluded).

Route 2 – LA/ AMTRAK

Commencing from any point in Los Angeles County, then over the most convenient streets, expressways, and highways to LA AMT.

Route 3 – Ventura/ AMTRAK

Commencing from any point in Ventura County, then over the most convenient streets, expressways, and highways to OXR AMT and RR LIB.

Route 4 – San Diego/ Los Angeles

Commencing from any point in San Diego County, then over the most convenient streets, expressways, and highways to LAX, SNA, HBR, and LA-WST.